LEGAL EDUCATION IN THE 21ST CENTURY

Panel Discussion

2000 Judicial Conference
United States Courts for the District of Columbia Circuit
Williamsburg, Virginia
June 15, 2000

Moderator

The Honorable Harry T. Edwards, Chief Judge
United States Court of Appeals for the D.C. Circuit

Panelists

Judith Areen, Dean
Georgetown University Law Center

Robert C. Clark, Dean
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Anthony T. Kronman, Dean
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PREFACE

On June 14-16, 2000, the courts of the District of Columbia Circuit held their Year 2000 Circuit Judicial Conference in Williamsburg, Virginia. The conference theme, "*The History of the Future,*" was purposely general so as to allow participants to reflect broadly on the past of the legal profession and consider the problems ahead. Over 450 preeminent lawyers, including those from private and government practice, public interest organizations, academia, and both the federal and local benches, met to discuss the likely changes and challenges that the bench and bar will face in the new millennium.

What follows is the transcript of the opening panel entitled "Legal Education in the 21st Century." It was a lively and provocative session, moderated by the Honorable Harry T. Edwards, Chief Judge of the U.S. Court of Appeals for the D.C. Circuit, and included deans from four leading law schools: Dean Judith Areen, Georgetown University Law Center, Dean Robert C. Clark, Harvard Law School, Dean Anthony T. Kronman, Yale Law School, and Dean John Sexton, New York University School of Law. The second panel discussion, on the evolving nature of the practice of law, addressed some of the same issues from the practitioner's perspective. The transcript of that panel, together with the transcript of a session on the coming challenges to the federal judiciary and the reflections of Chief Justice William H. Rehnquist on the future of the Supreme Court, is forthcoming and will be available by January 2001 on the U.S. Court of Appeals' internet site at www.cadc.uscourts.gov.

September 2000

LEGAL EDUCATION IN THE 21ST CENTURY

A Panel Discussion
Moderated by: The Honorable Harry T. Edwards

CHIEF JUDGE EDWARDS: Good morning. I would like to welcome you to the Year 2000 Judicial Conference of the D.C. Circuit.

During this panel session, we will reflect a bit on the history of legal education in the United States, and then we will ponder questions about legal education in the 21st century. The conference program this year aims to focus on big issues, not merely nuts and bolts; and we are sure that our outstanding panelists will offer many thought-provoking and possibly controversial ideas for us to digest.

Let us now turn to our extraordinary panel: Dean Judith Areen of the Georgetown University Law Center, Dean Robert Clark of Harvard Law School, Dean Anthony Kronman of Yale Law School, and Dean John Sexton of the NYU Law School. A biographical sketch of each of the panelists is in the program, so I am not going to waste time repeating what you can read.[1] Suffice it to say that each has had a brilliant career in the academy as a law teacher, legal scholar, and academic administrator. I know them all, and I know them well. They are not only very smart and successful in all that they do, but they are also thoughtful, interesting, and compassionate people, and they care deeply about legal education and the legal profession.

Now, there are some traits about our panelists that I want to highlight before we start our discussion. Everyone on the stage, including yours truly, finished undergraduate school in the 1960s. None of the panelists spent any appreciable time practicing law before joining the academy. Three of the panelists hold PhD degrees, and no one in this group is shy.

(Laughter)

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[1] The moderator's and panelists' biographical sketches are reprinted in the appendix.

CHIEF JUDGE EDWARDS: Indeed, I would say that everyone on the stage this morning has strong views on a great many subjects. Today, however, the panelists will focus on the principal issues giving rise to the tensions between the academic and professional missions of the law schools. With that brief introduction, we can begin.

As a start, I would like to ask each panelist to tell us, in two minutes or less, what, over the past 35 years, has been the single most significant development, occurrence, event, or work of scholarship in legal education? Judy.

DEAN AREEN: I hate lists of this sort. I also have to uphold the honor of legal academics; we never answer questions as posed. So I thought I'd pick three things.

CHIEF JUDGE EDWARDS: You can see where we're going today.

(Laughter)

DEAN AREEN: In the three decades that I've been watching legal education, the most significant change with respect to people is the increasing diversity of the students, faculty, and, more recently, the deans. In pedagogy, it is the development and flourishing of clinical legal education. And in the curriculum, it is the expansion of the scope of the curriculum reflecting the globalization of the economy and, increasingly, of legal practice. I'm not going to say anything about scholarship because our wonderful Chair has said it all.

CHIEF JUDGE EDWARDS: All right. Bob.

DEAN CLARK: In the last 35 years, the most important development has been the sheer growth and differentiation of legal education which reflects a similar pattern of development in the legal profession. During that time period, as you may all be aware, the claim of the legal system on the economy and polity, both absolutely and in percentage terms, has gone up. The same can be said of the legal profession. It is much bigger, both absolutely and as a percentage of the population. And many more areas of life, economic and social, are covered by law.

The academy has responded to this – not necessarily consciously, quickly, or certainly not optimally – but it has responded. As a result, the single most important background development is this: there are many more law schools, many more law students, many more professors, and a vastly bigger curriculum that covers many more subjects. As a result of this growth, there has been differentiation – that's part two of this big development – which results in a lot of the phenomena that disturb people, such as the increased number of life forms in the academy now. It's not just the single-cell, protozoan, universal form of generalist who studies developments and then synthesizes and explains them a little bit. Now we have scholars who are high theorists, who are almost purely historians of law, and law and economics people. We also have many more interdisciplinary specialists, as well as, on the other hand, many more people who specialize pretty much in clinical legal education or international developments. There has been a lot of differentiation.

The important thing to realize is that this parallels developments in legal practice. It's a massive phenomenon, and it's quite natural – not necessarily good though.

CHIEF JUDGE EDWARDS: Tony.

DEAN KRONMAN: The most significant change in American legal education in the last 35 years, in my view, is a fundamental alteration in the self-understanding, the self-conception of the legal professoriat. Law teachers, like other faculty in professional schools, occupy two roles. They are members of a profession who train students for the profession. They are also citizens of the university – teachers and scholars within the university community. Thirty-five years ago most law teachers, I believe, put their professional identity first. They thought of themselves, first and foremost, as lawyers who had been, as it were, posted to the university to do the work of the profession that consisted of training the new recruits – the young men and women who were coming into it.

Today, many law professors think of themselves, first and foremost, as academics, as members of the university community whose particular specialty, whose area of study and scholarly concentration, is the law. That distinguishes them from their colleagues in other departments. But they think of themselves, they define their role, first and foremost, in academic rather than professional terms.

One consequence of this shift in self-definition is an increased emphasis on the importance of the scholarly component or dimension of the work that law teachers do. And to understand why this is, you need to keep in mind the fact that nearly all of our law schools are lodged in large research universities. Small liberal arts colleges do not have law schools. You find law schools in large research universities where, since President Elliott at Harvard in the late 19th century, the emphasis has been increasingly on scholarship and scholarly production. The faculty in these universities teach as well as write, but prestige flows predominantly to those who write and publish. And so, as law teachers have come to see themselves increasingly as university citizens, they have adopted and absorbed into their own intellectual bloodstream the emphasis on scholarship that is so much a part of the culture of the universities they live and work in.

And I would just add two further thoughts. The writing that law teachers did 35 years ago was predominantly of the useful, instructional variety. Articles would survey the case law in a particular area and then propose a solution to a thorny problem, make a recommendation to the courts, offer a policy adjustment to the legislatures, and so on and so forth. Much legal scholarship takes that form today. Most of it still does. But increasingly you see articles and books whose sole purpose is understanding for its own sake with no practical punch line, and that is, of course, also a consequence of this readjustment or realignment in self-conception.

Now, is this good or bad? What are the consequences of this for the students passing through these schools? My own view – and perhaps I'll have a chance to elaborate on this later – is –

CHIEF JUDGE EDWARDS: Not if you keep going, Tony.

(Laughter)

DEAN KRONMAN: – that it is nothing but beneficial; that we are living through a period of intellectual excitement in our law schools which has not been seen since the 12th century in Bologna, and it's just as good for our students today as it was for those happy Bolognese some centuries ago.

CHIEF JUDGE EDWARDS: Tony has tried to make a preemptive

strike on all of the issues that we intended to cover today.

(Laughter)

CHIEF JUDGE EDWARDS: John.

DEAN SEXTON: I'm glad Tony added the coda. I feel very comfortable incorporating his comments into my time –

(Laughter)

DEAN SEXTON: – in joining his preemptive strike.

Harry spoke about our PhDs. It is my pleasure to add that my PhD is in religion, and to inform you that, thereby, I speak only truth.

(Laughter)

DEAN SEXTON: Because of my background, however, I do see a parallel that might not be obvious, especially to those who come from a tradition other than my own, which is Roman Catholicism.

In my view, it's not an accident that Harry, in asking his question, reached back 35 years. That reach is not just a function of our age. Thirty-five years ago, the Vatican Council was reformulating the way those of us who thought about religion and dogma thought about those subjects; in some ways, over that same period, the same intellectual move can be seen in legal education.

Underlying each of the three comments you've heard so far is the simple fact that the major development over the last 35 years in legal education is the emergence of law as an academic discipline with other subjects studied within the university. This shift began with the legal realists, but has blossomed in the last three decades. As an intellectual matter, it is a shift from a focus upon the "is" of the law, the description of what the law is, to a focus upon the forces that make the law what it is and upon our aspirations for what the law should be. As we have moved increasingly to a world – I say not a country, but a world – that embraces the notion that law ought to be based on reason and not simply on power, our academic reflection about what the law ought to be, becomes more and

more important, because of the need for reasoned critiques of everything from statutes to judicial opinions. This fundamental shift explains the growth of clinical legal education as a laboratory on the ground, the increase in interdisciplinary studies, the globalization of our curriculum, the diversity and explosion of our curriculum that Bob spoke about, and the importance of bringing into the conversation about law a multitude of voices – and, thus, the need for diversity of faculty, student bodies, and so on.

CHIEF JUDGE EDWARDS: As I had hoped, I think the panelists have described some conditions that give rise to the tensions between the academic and professional missions of the law school. I also know that there are members of this audience who have a different take on the subject. So let's try and play out some of the details to get a sense of precisely what our panelists have in mind.

Let's start with the increasingly academic nature of the law schools and the consequences that this has had for faculty hiring and publication. Starting with the first obvious question: Do the law schools hire too many young people straight out of clerkships or PhD programs with little or no experience or understanding of the profession, that is, the profession that most of the people in the audience work in? John.

DEAN SEXTON: Well, first of all Harry, with all due respect, I don't think any of the four panelists described a tension between the academy and –

CHIEF JUDGE EDWARDS: No, no. I'm saying I think that those of us who heard you, who have a different take on it, feel the tension.

(Laughter)

CHIEF JUDGE EDWARDS: I think it is interesting that you all may not understand that.

DEAN SEXTON: Right.

(Laughter and Applause)

DEAN SEXTON: Right. And I think, as I said to you before, you've

chosen the four of us as your foils in front of an audience that may as well be your family, and you know –

CHIEF JUDGE EDWARDS: This is my family, John. That's true.

(Laughter)

DEAN SEXTON: If our task is to throw down the gauntlet, I will. This is my proposition: one thing I lament in the interaction of the profession and the academy is the lack of appreciation in the profession for the diversity and explosion of excellence that Bob alluded to earlier. Another is the failure of this generation of practicing lawyers to embrace the explosion of excellence in ways that a generation 30 years ago embraced the work of the legal realists and began to import into practice things like policy analysis and so forth.

So now I come to the first illustration you use, which is the hiring of faculty. I think your premise is counterfactual. I think most of the –

CHIEF JUDGE EDWARDS: Well, it's a question I'm asking you. It is a question that many raise, and I'm not suggesting the answer.

DEAN SEXTON: I think one of the outstanding hires, for example, that the Harvard Law School has made to its corporate faculty in the last five years is a young person named John Coates, who was a partner at Wachtell, Lipton, Rosen & Katz.

DEAN CLARK: He was a graduate of NYU, too. One of our best hires.

(Laughter)

DEAN SEXTON: But notice my restraint in not pointing that out.

(Laughter)

DEAN SEXTON: Another recent appointee is Bryan Stevenson, an outstanding practicing lawyer. You have him on your panel tomorrow. And these two names are only the beginning of a long list. I could cite case after case after case where your premise is not accurate. I think we do hire

a lot of people like me, neophyte lawyers with PhDs. But the people we hire tend to come to us after being hired by people like you, because you hire the people we hire. And if you want the single greatest indicator of the people we hire, it would be a list of the people you hire.

(Laughter)

DEAN SEXTON: You feel they're worthy of working with you on your opinions, and we think they've got the one thing that can't be taught. Just as in basketball you can't teach height, we understand that in academic work you can't teach raw intellectual fire power. So, we go for raw intellect. And, when we hire some who have little experience in practice, we balance them with others who have experience. Virtually every one of our faculties is made up of people who, though they may come to us with less than John Coates' experience, end up, while they're with us, having all kinds of experiences, not just in litigation as our clinical faculty do and many others, but in the great policy issues of the day. And I think fifteen, twenty years later, they are sophisticated in the ways of law in a way that any law firm would want them.

CHIEF JUDGE EDWARDS: Actually, John, you're hiring only a small percentage of the people we hire, and the people you end up hiring often have little or no experience in practice. Any other comments? Bob, Tony?

DEAN KRONMAN: I think the interesting and important question here is what it is we think we're preparing our students for.

CHIEF JUDGE EDWARDS: Right.

DEAN KRONMAN: Thirty-five years ago that was a question to which there was a relatively clear, straightforward, and widely agreed upon answer. Our schools, most schools of our caliber around the country, were preparing their graduates for a practice of a certain kind in institutional settings of a pretty well-defined sort. That's less true today. I would say dramatically less true. And to the extent that it remains true, looking at it now from my vantage point, it isn't entirely clear how we train our students well to inhabit a 400-person law firm as the tenth man or woman on a team running around after three years of legal education, and however many years of higher education preceded that, doing largely mindless scut work

that doesn't call on the exercise of any of their intellectual or moral talents, number one.

Number two, that's the –

(Groans and Laughter)

CHIEF JUDGE EDWARDS: Be calm. They will be around later to get to.

DEAN KRONMAN: Actually, that's the less important point. The more important point is this: The careers our students lead after law school tend to be vastly more fluid than they were 35 years ago. This is true of my graduates, and I'm sure it's true of the graduates of all of our schools. They spend a couple of years here. They do one thing. They move on. They do something quite different for another five years, and then take a third job after that. This is a professional pattern that is no longer the exception, but increasingly the rule, as it is throughout the upper echelons of our whole economy. Our students are being trained by us for a variety of roles whose institutional prerequisites and preconditions are altogether different and various. And my response to that is to think that the best way to train them to inhabit successfully a whole sequence of different roles or positions of this kind is to train them in the general aptitudes, skills, and attitudes, as well as the mental, moral, and spiritual habits that they will need for a lifetime across the widest imaginable range of occupations.

CHIEF JUDGE EDWARDS: Bob, did you want to add anything?

DEAN CLARK: Oh, I have plenty to say about this. First of all, I agree with you. There is a tension and there is a problem in the increasingly academic nature of the academy. In responding to it, my emphasis would differ a little bit from Tony's, which stressed the preparation of students. I'm more concerned about the development of intellectual scholarship in the academy – whether it's connected sufficiently to an appreciation of what actually happens in practice. I think there are mitigating factors.

But first of all, on your factual point: Is it the case that we hire more PhDs? I don't know. Someone should do some real empirical research on this. I looked only at our own faculty, which consists of about 80 professors and assistants. We have about 17 PhDs, as well as a bunch of

SJDs, MDs, MBAs, and all that. They're distributed across the age spectrum, which surprised me to find out. There are a lot of people in their 50s, like me, who have PhDs. It's not just the people who we hired in the last ten years.

If you look at an experience measure – I looked at our ten assistant professors – the average years of experience, if you count clerkships and practice in a justice department or a law firm, it's an average of five years, which is exactly the average of the 17 people on our faculty who are in their 50s. If you go beyond, to people in their 60s and the few in their 70s that we have, it jumps up. Those people did have a lot more practice. So the phenomenon you're talking about seems to have occurred for us, but a long time ago. Not in the last ten, twenty years, but over thirty years ago.

What does it mean? I don't know. Do we have to worry about students being prepared? There are lots of mitigating factors. There are not only all the clinical courses – which about half of our students will take – but also every year we have something like 32 visiting professors and 32 lecturers, many from practice. That's sixty-something people who will teach hard law courses from a practitioner's perspective. We also have an academic market inside. One of the results of the change in curriculum is that very few courses are required. Most are elective. So the students will take what they think is going to be important. In my earlier remarks, I alluded to the fact that the curriculum has become enriched. Well, it's really quite a massive phenomenon. I didn't just throw that out casually. If you go back a little over 50 years, in our school we had 16 electives. A little over 25 years ago, 99. This past year, 265 electives. There are courses in all sorts of areas, and the students are free to take the ones that seem to them either intellectually interesting or relevant to a career or just plain fun or well taught. There are lots of safety valves in the system, so I don't worry so much about the students.

I do worry about the professors knowing what they're talking about when they write theoretical pieces for the law reviews. That's a major issue. The dynamics of prestige and getting class status in the academy are such that you have to write. You have to be theoretical. That has a bad side in that you may be disdainful of practice and not really have enough of a sense of it to realize what's an important problem or what's going to fly.

I think that, too, is mitigated by some developments in the academy,

but not entirely. There's a move towards empirical social science research that is, in some rough sense, a substitute for a practice experience. That's a very healthy development in my view. I think much more ought to be done.

But I would say this in defense of the academy: Our role – what makes law schools special is the fact that they are trying to develop, produce, and distribute ideas, wisdom, and understanding as a public good. Our job is not just to train people for practice; it's also to do things that are not going to be done by any other institution in our civilization – namely, to think about the analog to basic knowledge in the sciences. That's what the professors are trying to do, and I think that, inherently, it is an incredibly valuable thing. So I have a very positive spin on it, though I am worried about the fact that people do seem to be drifting off.

CHIEF JUDGE EDWARDS: Judy.

DEAN AREEN: We have just gone through a strategic planning exercise at the school, and as part of the exercise, the faculty on the committee put to themselves the question: What if someone suddenly provided us with an endowment of half-a-billion dollars or so, and we could continue as scholars, but we no longer needed to have any students? We'd be sort of the Rockefeller University of law schools. It was very interesting. People thought about it and talked about it, and I'm happy to report that they decided they did not want to work in that law school. So I think there is a natural linkage between our role and our relationship with students and graduates and what we do as scholars.

I agree with Tony that as we consider who should be on the faculty, it's important to consider what it is we're hoping to achieve as an educational matter with our students. I think we're defining that task differently, in part reflecting our understanding – and we're busy working to develop that understanding – of changes in practice.

When I was in law school, there was this phrase that reverberated. We were being taught to "think like a lawyer." Now the phrase increasingly is, "lawyer as problem solver." Litigation is just one tool in the box that the lawyer brings to solving problems, and just as he or she needs skills that go beyond that traditional focus on litigation and case law, we need, as a school, to think broadly about the curriculum. No one faculty

member resolves this. Rather, it is the fact that we bring to it a mix that will achieve that goal.

On our faculty, Vicki Jackson, who is here sitting somewhere, is leading this effort, and she's come up with the phrase "constructive lawyering." It's an ambitious goal. It includes the need to continue to develop analytic abilities, but it goes beyond that. And I think that poses a real challenge for us as we work to bring together a faculty that, as a whole, will provide the kind of education our students are going to need in this new century.

CHIEF JUDGE EDWARDS: Okay. Let me take it a next step and try to refine the question a little bit to give you a sense of what I think, again, some of the audience wants you to address.

When I talk about the young people or the PhDs, you're right, Bob, we don't have the precise numbers. I do have a pretty clear sense, however, that there are a lot of young people with very little experience who are being hired to teach at the law schools. I think that would be pretty easy to prove. And I certainly would not count clerkships as practical years of experience in the profession. Indeed, I do not think that anyone who has just completed a clerkship would suggest that.

DEAN CLARK: You know, if we announce this and trumpet this decision, you're going to have a lot fewer applicants.

(Laughter)

DEAN CLARK: Just think about the consequences.

CHIEF JUDGE EDWARDS: All right. But here's what I think some of us wonder: Are we forcing a disconnect from an important part of what the law is about? What people in this audience do is not all of what the law and justice system is about, but it is a lot of it. Is this piece being lost in the academy because the new people coming in really don't know much about it, or much care?

And then I want to add an additional wrinkle – and I don't know whether many in the audience understand this. In recent years, a number of schools have adopted a writing requirement. Prospective applicants for

teaching positions are expected to have done very serious writing as a condition of employment. When we were hired into the academy, it was based on our potential for doing serious scholarship. The current practice of forcing people to complete major articles before they are hired is, in my view, an extraordinary change. My law clerks confirm that, because you must produce a serious article before being considered for hire, you must forego any serious time commitment to practice if you want to enter the teaching market. You've got to produce the article. The time for practice is "lost" to them – that's their description – and the system tends to favor people with PhDs, because they've got major written work behind them.

So the question is: Aren't you promoting a disconnection between legal education and the profession? Indeed, as Tony said, we're not sure what it is the schools ought to be doing now. And I think a number of people in the audience would say, well, that's in part because you don't understand what it is that we're doing, and you're making it harder for yourselves because the people who you're hiring don't have the faintest idea what we're doing.

Where do you want to start? Tony, do you want to start?

(Laughter)

DEAN KRONMAN: Harry, I would distinguish two things: a lack of knowledge, which I think is less important; and a lack of concern or sympathy, which I think is more important.

It's one thing, and I think not a terribly disturbing thing, to be uninformed about the actual practice of law in a particular field. When I began teaching in 1975, I signed up my first year to teach the secured transactions course, never having practiced a day in my life except for one summer at Paul, Weiss in New York, but having been tutored in the subject by Grant Gilmore. I still believe, in 25 years retrospect, that that was a better and, in some ways, more practical introduction to the subject than any I could have had anywhere else. So it was a hubristic thing to do. This is a technical subject, but I loved it. It took me some time to get a hold of it, to get command of the subject. But I did eventually, at least to the point where I was able to hold myself out as being a credible teacher of it. So the knowledge deficit is much less worrisome to me, although obviously a

healthy curiosity about breaking events and frontier issues in a particular area is an important curiosity to keep alive.

What is of greater concern to me, and there is some evidence of this, although I think much less than I once believed to be the case – what's of more concern to me is, how should I put this, the attitude of disdain –

CHIEF JUDGE EDWARDS: Disdain, right.

DEAN KRONMAN: – for those who are muddying themselves in the ridiculous trivialities of the practical world, and have not chosen the higher, better, truer, and nobler path of the life of the mind.

CHIEF JUDGE EDWARDS: I couldn't have said it better, Tony.

(Laughter)

DEAN KRONMAN: That's a hubris of a much more disturbing kind because, of course, the life of the mind has a genuine nobility of its own. I think Bob Clark spoke truly and movingly about the intrinsic good of knowledge production – of the kind of basic research into the law and all of its complicated attendant features that our faculty engage in. It's tremendously important. The life of the legal mind for its own sake and as its own reward – I believe deeply in this. I wouldn't have led the life that I have if I didn't.

But there is no reason in the world why that conviction and commitment can't be coupled with a profound respect for the very different ensemble of character traits, of competences, of –

CHIEF JUDGE EDWARDS: But, Tony, why is the academy afraid of hiring preeminent people who have been in practice a few years and who finished in their law school classes at the same level as the people who went directly into teaching following a clerkship? They're no less smart, and the only additional thing they have on their resumes is a few years in practice. Why does that count against them?

DEAN KRONMAN: Fear? I don't know what you mean by fear. There's certainly no prohibition or inhibition to hiring such –

CHIEF JUDGE EDWARDS: Then why don't the law schools do it?

(Laughter)

DEAN KRONMAN: Well, to return to something you said a few minutes ago, there is a relatively novel insistence – it's not a formal requirement, but it's coming close to being that – that any candidate for a faculty appointment have demonstrated his or her bona fides when it comes to claiming to have a scholarly ambition. It's not enough just to make that claim, to say, "I've been doing something else for a while, and now I'd like to be a teacher and a scholar and to spend a large fraction of my time writing." It's not enough just to insist that that's what you want to do. That was enough when I was hired for my first teaching job 25 years ago. Now you have to make that claim credible by producing an object of some kind, or a couple of objects.

CHIEF JUDGE EDWARDS: Why? What sense does that make? It didn't make sense for any of us. What sense does that make now?

DEAN KRONMAN: Well, I don't know that it's such a senseless requirement if what we're attempting to screen for, among other things, are men and women of genuine scholarly temperament and talent.

CHIEF JUDGE EDWARDS: Okay.

DEAN KRONMAN: You know, there were plenty of people twenty-five, thirty-five years ago who were hired on promise and ended up having brilliant careers as teachers, but never wrote a word.

CHIEF JUDGE EDWARDS: I've got the panelists rolling their eyes. This is good.

(Laughter)

CHIEF JUDGE EDWARDS: John, and then I'll come back to Bob. John.

DEAN SEXTON: Well, first I want to caution us about getting into a dynamic of disdain, either in this conversation or generally. To the extent that the conversation is designed to be more than an hour and a half of

interesting and stimulating talk, and is to go outside of this chamber, I think it's important to avoid getting into that kind of dynamic.

I think the reaction in this room this morning shows a kind of healthy disdain for what might be captured in the phrase "yet another law review article." But, there's a lot of baggage that comes with that phrase. And I think any of us would deplore a growth in the academy of a disdain for the profession. We condemn it to the extent it exists. We march in the same army with you. On the other hand, if you're feeling in us an intensity, it's because we are urging you and the profession to take seriously the need for the kind of academic study of law that complements, and is not resistant to, a very positive interaction with the bar.

I'm sitting here rolling my eyes and shaking my head, because, frankly, I'm wondering what the counter case is. Let's take Bob's statistics. Granted, they are a small fragment, but if he's right – five years, reduced to three because you don't count the clerking years. Okay, three years is what is typical now, and was typical then. You said it was great that Yale made the leap of faith in Tony. But he said he came without any practice experience, right? What we're saying is, we are flooded with applicants; and we want people to prove they can sing outside the shower. You know, singing in the shower sounds great. We could be a great quintet.

DEAN KRONMAN: That's even better than thinking outside the box.

(Laughter)

DEAN SEXTON: That's right. And, yes, we are beginning to demand that applicants produce something in writing and display the raw intelligence we want. And, by the way, that may cut for hiring people later in their careers because when they finish their clerkships with you, if they don't have a PhD, they go into practice and write the article there. But what the heck is your counter case? That we would be better –

CHIEF JUDGE EDWARDS: The counter case –

DEAN SEXTON: Wait a minute. Let me finish. Let me finish.

CHIEF JUDGE EDWARDS: Let me tell you so you can answer the question.

DEAN SEXTON: Wait. I want to know, what is your counter case? That we'd be better off if, instead of three years, it was eight years and they were out carrying somebody's briefcase?

CHIEF JUDGE EDWARDS: No, you've missed my point. There are two responses to the suggestion from the academy that the young, bright people who are now being hired are the only real gems. First of all, a lot of the PhDs – and the people in the academy have confirmed this – are not the best in their field. They have a PhD, and they have done a dissertation; but no one is willing to confirm that these "law and" people are the best that you can find in the end. So that's a bogus argument.

The second point is, what is your aversion to hiring people with the credentials who also have some practice experience? The present ritual in the academy is not to look to that pool. You do not encourage that pool. Bob.

DEAN CLARK: I'll give you an explanation and then a response as to what we ought to do because I sympathize with some of what you're saying.

CHIEF JUDGE EDWARDS: Okay.

DEAN CLARK: The explanation is pretty straightforward. Because of the differential in salaries between practice and teaching, in order to get very bright people to go into teaching, you have to give them a pretty sure shot at tenure. So what happens in law schools compared to other departments and universities? Well, for one thing, most people get promoted. In some schools, they almost all do. As a result of this, we hire few of them, and we want to make sure that they're almost there when we hire them. That's a consequence of responding to the market.

CHIEF JUDGE EDWARDS: So it's kind of a reaction to the market?

DEAN CLARK: Yes. When you hire an assistant professor, at some schools it's virtually the same as giving them tenure. So you want to be able to see that they can do it.

Now, let me offer point two of the explanation. What is the task of the

professor that is most likely not to be done by highly talented people? The answer is scholarship. The pool of people who can learn how to be good teachers is much, much, much bigger than the pool of people who can do good scholarship. Scholarship is something that requires an internal drive, a lot of self- reinforcement, an ability to work long hours without being part of a team, and to get satisfaction out of the product itself. That's a rare capacity, very rare, and you can't say that just because someone was at the top of their class they can do that.

CHIEF JUDGE EDWARDS: I understand.

DEAN CLARK: So you want to see, you know, "Show me the money." Can you write? Let's see it. Not that you're brilliant, and that you have a project and you want to write. "Just give me the time and I'll do it." We've heard that before. There are so many PhD/ABDs, you know, in the PhD world that you referred to.

CHIEF JUDGE EDWARDS: Right.

DEAN CLARK: There are thousands of these people who did everything except their dissertation, the most important part. The same problem. So we want to see them write.

Can people write in practice? Yes, they can. A lot of the people we hire who have had several years of practice have suffered and groused about it, but they have produced, and we see that they can do it. So that's the explanation.

Now, the response. Is this an ideal situation? No. I think I am, maybe more than Tony, worried about the potential disconnect. I don't think sympathy is enough. It's important. I think having some people with a lot of practice experience is very important. I'd put it this way: Not one model fits all. We ought to have a diversified portfolio of hires. That's my own strategy. For example, in managing a corporate law department, it's very important to have some professors who are JD/PhD types, who are in economics, who are very, very, very theoretical, and who really know what's going on in economics and are truly first class. It's very unrealistic to think those people will have a lot of practice experience. But you can, at the same time, try to hire the rare person who became a partner and then wanted to teach, and who found the time to write. You mix them together.

It's a great combination. And then throw in someone with some international experience and someone with a PhD in sociology. It's very important, I think, to have a mix and wrong to think that we can force everyone into the same model. The problem, of course, is that professors, in doing the hiring, tend to want to have one model and to replicate themselves.

CHIEF JUDGE EDWARDS: Exactly. Judy, did you want to add anything?

DEAN AREEN: Just to underscore what Bob said at the end. Doing first rate scholarship is not something that even some of the very brightest people can manage. So, of course, the schools have to find a way to identify this special talent.

I'm not sure of the factual premise of your question, because I do see some of the diversity Bob was referring to. At least two of us on this panel have hired quite senior people in the tax field, and I think we all are making what we hope is judicious use of adjunct faculty. So from the students' point of view, professors have an interesting mix of backgrounds in practice and in the academy.

CHIEF JUDGE EDWARDS: Let me take you to what I think is the next question in the minds of the audience, especially in light of some of your answers.

A lot of us would say, okay, we hear you. Scholarship is terribly important. You want to know whether these people can write. But a lot of us who are the potential recipients of academic writing would say it sure isn't serving us, that is, legislators, practitioners, and judges. A number of scholars have openly conceded to me, "Look, I write for a few other scholars. That's what I'm here to do. And if I'm having fun with it, and they think it's profound, that's my mission."

Is that really – and I'm asking with tongue-in-cheek – is that really all it's about? There are a lot of people in this room who would say to you that what you think is profound scholarship is utterly useless to us.

(Laughter)

CHIEF JUDGE EDWARDS: Does it matter? Do you even care? I mean, we really believe this. I'm very serious about this.

(Laughter)

CHIEF JUDGE EDWARDS: There are a lot of people in the room deadly serious about these questions, and I don't mean to poke fun. I've been in the academy. I love the academy. I feel very strongly about it. But a lot of what is being produced now is found by a lot of us to be of no use at any level – theoretical, practical, or doctrinal. We're not sure what's going on right now, and I think the audience would be very interested to hear what you think about what's going on and how it helps us, if at all. John, go ahead and start.

(Laughter)

DEAN SEXTON: Well, I did toss out before the fact that I think one of the lamentable things in this kind of conversation, as it has gone on in various venues, has been the fact that we've gotten into this kind of rhetoric of disdain, instead of a rhetoric of mutual evaluation. I think that a problem among some of the leaders of the contemporary profession, by contrast to the way the profession reacted 30 years ago to the legal realist movement, is their failure to understand the importance and the fragility of basic research. The analogy to medicine is profound.

This is not to defend everything that's done. There was a great book that attacked foreign aid in the 60s called *Billions, Blunders and Baloney*, and it picked up on the fact that the government was financing iceboxes for Eskimos and collapsible toothpaste tubes. You can do that with these government waste studies. You can pick something out. But usually if you get behind the example that's picked out, it's basic research in the way that, if you analogized to medicine, you'd say, "Wait a minute. We don't want to give up on that too quickly."

The fact of the matter is that the front page of this week's paper featured some very important research coming out of Columbia by Jim Liebman, with others, on the death penalty. There's a lot of research of this sort that informs important policy debates, and which could be very useful in both legal decision making and the practice of law.

CHIEF JUDGE EDWARDS: I would appreciate it if each of you would note, for the edification of the audience, examples of useful scholarship as they occur to you. I think it would be interesting for the audience to understand what those precise examples are. I don't mean to suggest that all scholarship is awful. That's not the case. But I think a lot of people are having trouble understanding what is useful and what we should be looking at.

DEAN SEXTON: Right. I think the first thing to understand is that there's a huge amount of scholarship, as Bob indicated earlier, which is the classic scholarship of the "is" of the law. Wright and Miller is still the basic treatise. And in addition to that, there's a huge amount of scholarship that is empirical, such as the death penalty study this week, or the work on the Superfund, or bringing law and economics into torts. And then there's this theoretical stuff which may have less of a direct connect, but which can be analogized to basic research, and which goes to this very fragile element that the academy brings to this conversation. We, and here I embrace everybody in the room, are dealing with the most powerful instrument humankind has created to affect society – law. And we ought, as a profession, to be thinking constantly about the ideal and the "ought" of the law in different contexts, as well as the "is." And that's where the basic research becomes important – you know, sociological studies, and anthropological studies, how the law comes to be, how certain voices get to be heard while others are not. It involves a kind of self-critique. That may not affect tomorrow's deal, but it will affect profoundly whether there's justice in our society.

CHIEF JUDGE EDWARDS: Okay. Tony.

DEAN KRONMAN: Well, when law teachers thought of themselves, first and foremost, as members of a profession whose specialty was academic work, the benchmark, the touchstone of usefulness was the one they naturally employed. It was entirely understandable and natural for law professors, who thought of themselves in such terms, to ask, when they were composing an article: "What good can this serve within my profession and within the larger world of law?" As a result, a kind of paradigm of the law review article grew up and took root, and was widely, if not universally, embraced. This was a paradigm in which after, perhaps, a learned historical essay, or a very careful and reflective and disinterested examination of the case law, a concrete recommendation would follow,

and the recommendation would be cast in the form of a proposal to someone – to some institution, to some authoritative lawmaker – or an interpretation for the courts or legislators.

That has remained, to a very large degree, the dominant form of legal scholarship today. Even much basic research, or work that wants to be basic research, is still shoehorned into this old form. Because this older, self-understanding lingers on and continues to have a great influence on the way law professors think of themselves and their work, it's awfully difficult for a law professor, in good conscience, to say, "The whole point of this essay is to help us understand, for understanding's own sake, some piece of the law world that we inhabit."

But that actually is the object or aim or purpose of what we have here, following Bob's lead, been calling the basic research function or component of legal scholarship. It's not the only one by far, but it is surely, and here I want to underscore a word that John used, it is the most fragile just because its usefulness is least clear, most indirect, and maybe even non-existent. One of the hardest things on earth to sustain is a belief in the value of what does no immediately visible, useful work. But we must sustain that faith in our law schools today, and I think that the profession must help us in that. To the extent that there is disdain in the air, it does damage in both directions because we are as dependent on your confidence in our work, despite the seeming pointlessness of some of it, as we are on your practical understanding and practical wisdom in giving us the lead and pointing the way and suggesting what the real issues of the hour are.

CHIEF JUDGE EDWARDS: Okay. Bob.

DEAN CLARK: Yes, well, similar points to Tony here. I think it's very sad, even despicable, for professors to write just for other professors or to improve their status in a little club. I hope most of them don't do that. I think, on the other hand, that it's wrong to expect professors to be writing for judges and practitioners. That's not their job.

CHIEF JUDGE EDWARDS: I agree.

DEAN CLARK: Their job is to write for understanding, for the future, for the greater good. That sounds grand, but I believe it profoundly. Then the question is, can this happen?

The problem is, when you're writing for a client or a judge, you get some feedback. "This was good. This was bad. Doggone it, do it over." When you're writing for a deeper understanding, all bets are off. You don't necessarily get that control. So in areas like this, it's not unusual to have thousands of academic flowers blooming and producing papers and scholarly articles before you get just one seed that falls on the ground and grows into a beautiful tree.

There's a lot of wastage. There's no question about it. The question is how to cut it down, how to steer people. I think the criticism from the profession of particular pieces that scholars produce is probably useful. Disdain is one thing. We shouldn't have generalized disdain, but criticism of the apparent obfuscation or disutility of work is a good thing. Keep it up.

What can we do? Let me give you a cheerful thought. I think the situation now is vastly better than it was in the pre-Langdell days. In those days, people who became lawyers actually didn't go to law school. They trained in apprenticeships, and they worked as lawyers. But universities had law departments that taught jurisprudence. I urge you to go back and read some of the work that was produced by scholars in those centuries at Oxford and places like that. It's totally useless.

(Laughter)

DEAN CLARK: Nowadays, some of the more interesting, very, very academic legal scholarship is not totally useless. It's not necessarily useful to any of you who have a practice or decide cases, but you can see how it could play out in important policy debates. Some of the stuff that pops into my mind – I've had occasion to read a lot of the work of Mark Roe at Columbia on comparative corporate governance. It addresses profound issues of why the stock markets and the arrangements of shareholders and managers are different in Europe. What causes that? Is it going to converge to the American way, or vice versa? It's very important to try to understand because it could affect policy decisions as well as practice decisions. We don't know the implications yet. No one sees an immediate payoff, but it's very important.

Similarly, some of the people in the academy are now doing work that relates pretty clearly to government policy making. For instance, my colleague Kip Viscusi has done amazing research on the Superfund statutes, trying to figure out exactly how much it actually costs to save a life by means

of the Superfund statute versus other ways of saving a life. Well, this sort of focuses attention when you see the results. You can argue about it, but no one can claim that it's irrelevant. And so there are a lot of different types of things going on.

CHIEF JUDGE EDWARDS: Judy.

DEAN AREEN: Of course there's scholarship none of us would defend. But you asked for some examples of useful research. One of my current favorites is the work Alex Aleinikoff has under way. He came to us after three years as INS's General Counsel and then Deputy. He's working on a project with researchers in the social sciences at Carnegie, examining citizenship in four or five different nations around the world. There are quite different understandings of what it takes to become a citizen: Must you be native born? Can you be naturalized? What are the rights that go with it? And what are the implications for refugee policies that are affecting all of us around the world? That, to me, is an interesting mix of theory with some immediate applications.

I guess the question is, why would we worry about someone who is only a teacher? And I want to bring us back to the link between scholarship and teaching again. I think it is because we are persuaded that someone who develops the habits of mind that produce first-rate scholarship will also bring to the classroom an analytic ability and a kind of originality and creativity that can only be transmitted by someone who is working at the frontier of his or her subject.

CHIEF JUDGE EDWARDS: Let me ask one last question in this general area. Should the law schools and legal scholars be thinking reflectively about some of the institutional problems that we're facing in the profession, that is, the failure of public interest organizations – their inability to exist and exist well – and the failure of the law firms? The turnover rate in the law firms among young people has reached the point of being pretty astonishing. Isn't this something that legal scholars should study? The law schools are sending these students out into a world that many find alienating and from which they flee. So I'm asking you for your side of it. Shouldn't you be thinking about how to address some of these issues and how to help the students to think about these institutional arrangements? There isn't much scholarship out there on these professional issues, as far as I can tell. I'm asking now.

DEAN KRONMAN: Oh, it's unquestionably important, yes. This is a subject of vital importance. And, yes, there are people on each of our faculties who are predominantly, centrally, almost exclusively interested in these questions. I think of David Wilkins at Harvard or David Luban or Steve Gillers or Bob Gordon at Yale.

CHIEF JUDGE EDWARDS: There's a guy named Kronman who has written on this, too.

(Laughter)

DEAN KRONMAN: And every one of them has not only taken this as a serious subject of study, but written about it extensively. And beyond the individual faculty members who are preoccupied with these questions, and the writing they produce, there is a growing generalized sense within our faculties that the professional world we're training our students for has changed and is continuing to change in the most dramatic ways. We need to be thoughtful and analytically clear-headed, as best we can, about these changes to know what it is we're up to.

CHIEF JUDGE EDWARDS: How do you build a bridge between the academy and the profession? Let me suggest, for example, that the MBA bridge to the businesses is relatively firm, that is, there are some connections that exist. So some of what business school professors do in this area is heard, desired, and used by the profession. With respect to legal education, you're right, all of the people you talk about are doing serious work; but it isn't clear to me that they have a natural bridge into the profession that would allow them to have the same kind of impact in the institutions that we're concerned about. How do we get past that? Bob.

DEAN CLARK: That's a hard question. I agree that we ought to be doing a lot more research in this area. We have done some, but there are massive phenomena that ought to be studied by academics much more than they are, such as the growth of the profession, globalization, and the rise of multidisciplinary practices – a big issue that academics ought to be thinking about, as well as the problem of mass delivery of legal services to the lower middle-class – those in between pro bono and high-end services. There's just not enough being done. Why is that? I'm not entirely sure. I think part of it has to do with the kind of academics we've hired. The JD/PhD-types that we have hired have tended to have degrees in economics,

philosophy, or history. Relatively few have the serious social science backgrounds that would make them the type of people likely to gravitate toward these areas of study. We ought to work on it. We ought to get some such people. I think just importing practitioners into the teaching cart won't necessarily do it. You've got to get people with serious training in social science methods. People like Marc Galanter, for example, or – I could name a bunch of others. There are just not enough. Schools really should develop programs to address these concerns.

CHIEF JUDGE EDWARDS: John.

DEAN SEXTON: I think that there's a tremendous amount of activity on a whole range of problems, including the ones of the profession we've talked about. I think the work on diversity becomes very important here. I think of the work that's being done, again as basic research, into how student career choices are affected by debt. You know, that's another important piece of this puzzle.

Your question on bridge is a fascinating one when one realizes that there is this mountain of work that's building. And it gets back to some of our earlier conversation about why there is this kind of mutual feeling of disdain. I think panels like this are a beginning. I'm also struck by the fact that each of the four schools that are here has a whole set of leaders of the bar who are fairly well integrated into our communities. I'm not now talking about the classic adjunct model where a person shows up and leaves and isn't well integrated. Rather, each of the schools – and I think law schools increasingly around the country – have a smaller set of people, smaller than their adjunct faculty, who truly are quasi-faculty members, but whom you would feel very comfortable identifying as leading judges, or practitioners, or whatever. And I don't think we're using that asset well enough.

CHIEF JUDGE EDWARDS: No. We should do more.

DEAN SEXTON: I think the failure to use these people more may be the result of a structural thing, both in bar associations or circuit conferences, and in faculty conversations. For example, it has never occurred to us to invite those quasi-faculty members to faculty conversations, and I think that may be a step that we ought to take because the research is being done on many of these issues, and it's an important –

CHIEF JUDGE EDWARDS: I think it's a bridge problem.

DEAN SEXTON: And if I can add just one element here. This is a perfect illustration of an area where the existence of an academy, which is relatively – not completely, obviously, because no one is – but relatively disinterested in a particular outcome to a problem, and can stand there to speak to the ideal and the "ought" as opposed to the "is," is extremely important. Now, I would submit this is a species of a more general phenomenon.

CHIEF JUDGE EDWARDS: All right. Judy, go ahead.

DEAN AREEN: One of the things we've been intrigued by in MBA education, since you mentioned it, is the use of case studies. Harvard Business School really has the monopoly in this area. They prepared the case studies for business schools that are used throughout the country. There really isn't a counterpart in law schools. Paul Brest has started some very interesting work on judgment and decision-making that does a bit of it, and some of the schools are now beginning to talk. Stanford is in on the conversation, as is Harvard, about whether we could do something comparable because it brings the practice of the profession into both the classroom and the academy.

There's one issue, though, that we have to wrestle with; and that is the confidentiality problems that we have in law firms that don't have a counterpart in the corporate setting. It's something we can resolve, but it needs some attention.

DEAN KRONMAN: I just wanted to add one comment in response to what Judy just said. The business school case method makes an interesting contrast with the sorts of cases that we use as the grist for our mills in law school teaching. They're different in lots of ways. The business school cases are much more detailed, and you've got more to chew on. But they're different in another way, too, which strikes me as even more important. The business school case invites the students in the class to imagine themselves as the profit-maximizing owner or entrepreneur in charge of a venture who, given all of the facts, is to make the most money with the resources available. That's the dominant perspective that students are invited to adopt.

What's the predominant perspective that students in a law school classroom are invited to adopt still today, every day? It's the perspective of the judge. Of course, they're asked to be the lawyer for the plaintiff and the lawyer for the defendant, and to imagine how a legislator might have fixed the situation, but at the end of the day the fundamental perspective, which sums up all of the others and which has the dominant authority and prestige in the law school classroom, is the judicial perspective.

CHIEF JUDGE EDWARDS: And isn't that highly questionable given the way the world has changed?

DEAN KRONMAN: I would say no. The justification for it is as sound today as it was when the case method was invented, and that is that whatever you do when you leave law school and go out into the professional world of law, it is essential that you have internalized the judicial point of view because it is unlikely you'll become a judge; but it's awfully likely that you'll be arguing to judges, if not directly, then at least at three degrees removed.

DEAN SEXTON: And the judge is the player in the equation who ought to speak for the ideal.

DEAN KRONMAN: Yes, exactly. So incorporating the judicial point of view is incorporating the aspirational, idealized vision of law.

DEAN AREEN: We never want to lose the judicial perspective, but we've got three years to educate law students, and I think it's a mistake if it's the only perspective presented during the three years.

CHIEF JUDGE EDWARDS: I agree with that.

DEAN CLARK: I agree. I think there are many other perspectives. I wanted to follow up though on the point about studying the profession. Mentioning the Harvard Business School suggests this. They're doing a lot with distance learning. In the future, law schools could use on-line connections to involve practitioners and judges who are interested in changes in the profession in teaching, at a much lower expense. We've just had, for example, a seminar that actually brought in a lot of people working on multi-disciplinary issues. Bernie Wolfman of our faculty did that. And, because of the prestige of the school and the fact that he had some extra

funds, he brought in all sorts of very distinguished people, one each week, to talk about their perspective on it. You can't do too much of that, though. However, we also have courses now where we have virtual lecturers – practitioners who are appointed to interact with the students on particular issues. You can do a lot more of that in the future.

CHIEF JUDGE EDWARDS: Talking about what we may not be able to do enough of – are we doing enough of, or is it really possible to do enough of what we call clinical education? And have we overcome the problem of second-class citizenship for the faculty persons assigned to teach in the clinical programs? At least in years past, that was a problem in that those who were brought into clinical legal education were seen to be on a different and lesser track. How are we doing with clinical legal education? Can we ever really do it as well as it ought to be done given the money and other problems that you're aware of? Are we attracting the right people, and have we gotten them on par with the rest of the faculty? John do you want to start?

DEAN SEXTON: Well, every move we've talked about, and any other moves we would talk about that would develop a consensus in this group, involves lowering the faculty-student ratio. Clinical education is one example of that. Serious interdisciplinary work that leads to seminars is another example. And, of course, that hits the most expensive part of legal education, which is personnel. And that cost will only increase as the environment around us for highly talented people that are thinking about law continues to drive up the amount of money that those folks can request.

Nonetheless, even in the face of that reality, one of the dramatic things that has happened over the last 30 years has been the amazing growth of clinical education, and I think that this runs the gamut of all of legal education. Now, clinical legal education isn't just one thing either. There's a whole set of ways to do it, and there are expensive ways to do it and less expensive ways to do it. As in most things, typically the more you invest the better the product, but not always. And I think this betokens another possible bridge, and a healthy development in the context of this conversation.

The status issues? My observation is that the status issues have come close to working themselves out. I think that the status issues will turn. I think we're moving generally in education to a point where formal titles

will become less and less important, and the real status will come from the quality of the ideas that people put on the table in conversations, either in the academy or between the academy and the relevant constituency – in this case, the bar. And I think that more and more clinicians are beginning to participate as players in that conversation. So you see lead articles in major law reviews that are written by clinical faculty, and I think it's simply a matter of time before that process works its way out.

CHIEF JUDGE EDWARDS: All right. Tony.

DEAN KRONMAN: This is a huge and fascinating and sprawling subject. Just a couple of observations.

Number one, the status problems, as John describes them – I think they've softened. We've learned to live with them, but they do persist to some degree, and they're bound to in an environment in which scholarship continues to have the high prestige that it does and, indeed, an increasing prestige. That puts pressure on clinicians to become publishing scholars themselves, which for many of them means redefining their role within the law school and ceasing to be the clinicians they were hired to be. So the problems are real and they do persist.

But there is at least one important point of rapprochement between the clinical and academic faculties that I would emphasize – and this goes to John's question or John's observation about the variety and multiplicity of clinical teaching and learning experiences in our law schools. What is clinical legal education for? One of the things it's for – it's not the only thing for sure, but it's one of the important things that it is for – is to give students a direct, personal exposure to the ethical tugs and strains of law practice as it's really lived, to feel what it's like to have a client and be caught between the demands of the client and the perceived demands of the law itself. And to the extent that academic faculties are becoming themselves more interested in what used to be called questions of professional responsibility and today are more broadly described as questions of professionalism, they find themselves interested in the same kinds of issues that their clinical counterparts are working on, often in collaborative and creative ways. I'll let Judy describe the clinical project that David Luban, who is an academic par excellence, has under way at Georgetown. But that's just one instance of a point of connection that's been made at many, many schools around the country.

CHIEF JUDGE EDWARDS: Judy, do you want to give us that description?

DEAN AREEN: Absolutely. David, whose academic specialty is philosophy, has focused on professional ethics, and chose, when he came to us, to add a course just for students in our clinical programs. As a result, the students have a most thoughtful consultant as they deal with the actual ethical responsibilities that accompany the burden of serving a client.

I have mentioned that the flourishing of clinical legal education is one of the dramatic, perhaps the most dramatic, pedagogical changes of the three decades I've watched legal education. The success is that even the most selective law schools now all have clinical programs. That was not true even ten years ago. There are status problems being worked out in some schools, but I think the sheer spread of the movement suggests that it is certainly here to stay, and I am confident that our clinical colleagues will hold their own in the discussions John referred to.

Money continues to be the real issue. You can still have an effective law school classroom with 100 or 125 people and one faculty member. Our best judgment is that you cannot have more than eight students with a clinical faculty member if it is to be a learning experience for the students as opposed to simply some kind of service for legal aid, which is not, in our view, a proper role for law schools.

CHIEF JUDGE EDWARDS: I think the money problems are truly significant and are often misunderstood. Bob.

DEAN CLARK: Absolutely. Well, let me just express my agreement with a number of these things.

Clinical legal education has grown enormously in the past 30 years. We used to have zero clinical instructors who did field work for academic credit. Now we have 30 on the payroll. It has many good aspects in terms of student involvement – learning skill sets, broadening sympathies, ethical training. There are status problems because the basic move to clinical education is a move toward specialization and differentiation of the teaching profession, and the skills for that are different than the skills for the academic track. There is no neat solution to those status problems. It's a tension that will persist, even though it can be mitigated. And the big

thing, of course, is the cost. There are limits as to how far we can go with this.

My main response, though, to your questions is that law schools have to do something very different from, and in addition to, clinical education. I think it's very important that we somehow induce academics who are students of the legal profession to focus, in an intellectual way, on delivery of legal services to the broader public. There's been surprisingly little work on this. One of the great disappointments following the rise of clinical legal education has been the relative absence of serious scholarship about the delivery of services – comparative analysis, such as what happens in other countries and within different types of legal aid societies. Can it be done by introducing a McDonald's type, H & R Block model, or should the government try to do it, or what? There's a lot of general thinking that simply hasn't been done. It would be incredibly valuable in the long term if the top law schools had people working on that, rather than just continuing to build up the clinical programs for skills training. That's important, too, but we've got to take an entirely different track.

CHIEF JUDGE EDWARDS: As a last category of questions, I'd like you to give us a sense of where you think we are now on the meaning and value of diversity in the law schools. Certainly since the days when I was in law school, when I was the only minority person in my class, things have changed. But there are people who still wonder about the meaning of diversity, both in terms of the faculty and the student body. There's also the question of how different minority groups within student bodies are faring. That is, are they comfortable with what they're doing? Are their opportunities the same as those available to non-minority students? How are we doing on this score, generally? There are lots of specific questions that I could ask, but, because our time is tight, let's focus on the general issues of diversity. Judy, do you want to start?

DEAN AREEN: I'll start with 25 years ago when I got a call from you and came to visit at the University of Michigan Law School. I found that I was the first woman of faculty rank to visit, so a lot has changed.

CHIEF JUDGE EDWARDS: That's right.

DEAN AREEN: As a student, I was one of eight women in a class of 168. For two years now I've welcomed an entering class that is more than

50 percent women. Our student body, and it's true of all of the schools up here, ranges between 28 and 30-some percent in terms of diversity. The student body is our most successful part of this story. There's work to be done on the faculty side, and particularly with faculty of color. It is a struggle for all of us, and they are related because I think it takes diversity in the student body to support a diverse faculty, and vice versa. And then as I mentioned at the beginning, there are deanships. We're working on it.

CHIEF JUDGE EDWARDS: All right. As Judy has indicated, there is indeed a problem with a lack of diversity on some law school faculties. The audience certainly wants to know why. What's happening? Why is it taking so long to effect change? Do you have any answers? Bob, do you want to go ahead and answer?

DEAN CLARK: Well, things have changed a lot. Our student body and our faculty is a lot more diverse than it used to be. There's no question about that. We've hired, in the last several years, a few additional minority professors. We already had a good set compared with other schools. And the same is true with the number of women on the faculty. It has way more than doubled in recent years. Yet, there is still a long way to go.

I guess the interesting part of your question relates to how minority students or the diverse candidates feel about their experience at law school or beyond. Well, my sense is, increasingly, pretty good. I can't help bragging here a little bit. I know my colleague David Wilkins may still be in the room somewhere. David has organized a reunion called Black Alumni 2000 at which we will bring together as many of the African American alumni who have graduated over the past 30 years as we can. And part of the goal is to highlight the successes of these people. We have minority graduates in all sorts of positions – in law firms, in judgeships, as heads of major corporations – and I think the whole emphasis has shifted from talk about affirmative action and what's wrong with attitudes toward really just talking up the successes so we can encourage the next wave of student applicants.

CHIEF JUDGE EDWARDS: Tony.

DEAN KRONMAN: The real question here, the deep and interesting question, is why diversity is an educational value? There's no doubt that our faculties and student bodies look quite different than they

did 20 or 30 years ago, but why is that of value?

The diversity idea began to become an important one, and eventually in time became a central and crucially important one, in the affirmative action debate. If affirmative action was originally understood in all of its various forms, and in institutions of higher education in particular, as a mechanism of redistributive justice for moving opportunities around in a way that would advance a conception of social justice, and if those external justifications for it were struck down or fell by the wayside, what was left was the idea that preferential programs for the admission of minority students and the hiring of minority faculty were good not just because they promoted social justice in the world at large, but because they were internally valuable to and essential to the educational mission of the schools that adopted them. The question is why? Why is this so, and how does diversity do that? We're nearly out of time, but let me just make one or two very brief points.

First of all, I don't think anyone today would challenge the claim that diversity of values, attitudes, life experiences, Weltanschauung, and the like, in a law school body is a good thing. Students in law school are being prepared, among other things, to be leaders in a democratic culture. And one essential part of that preparation is the rough and tumble of meeting and engaging with people quite different from themselves. That proposition is incontestable. What is, of course, at the center of the storm of controversy around the diversity notion is the linking of diversity in that sense to diversity of race and ethnicity. And for what it's worth, my belief is that in America today, on the eve of the 21st century, that linkage is justified and plausible. Whether it will always be is harder to say. There is a bit of a paradox in the background here because the very conditions of life that make that linkage so plausible are conditions of life that we are, many of us at least are, determined to eradicate. If we succeed in that mission, will the linkage still be justifiable? That's the deep philosophical and institutional question that's behind the claim that diversity is an internal educational good.

CHIEF JUDGE EDWARDS: John.

DEAN SEXTON: First, I don't think there's a major school that is in a satisfactory position in terms of the empirical representation of minorities on the faculty. I think the student bodies are very different. The

explanation for the faculty situation is quite complex. Part of it being good news, and that is that there is a very, very active market for talented lawyers of diverse backgrounds. It is very difficult to hire these people, especially folks who have extended families with needs if they are the first to be able to meet those needs. By coming into academe and living the life of the mind, we agree to take one-tenth or one-fifth of the compensation that could be commanded elsewhere in the market. The rewards that our faculties achieve are not principally monetary, and diverse populations typically don't have the luxury of capturing those rewards – and that would be particularly true, interestingly enough, I think, with Asian and with Latino faculty.

But to move to the issue of diversity, I would like to associate myself with the importance of diversity in the terms Tony used. Some of the rhetoric of diversity as it plays out is about symbolic politics. This probably will disappear in ten to fifteen years. But that gives us no solace now. What we need to remember is that the role of the academy, or at least a principal role of the academy, is to seek the ideal of the law. If this is so, then it is critical to examine why voices are heard and not heard. To facilitate this mission, we must have voices in the conversation that come from diverse backgrounds. In other words, we need diverse voices to achieve understanding and then to shape the law. I think that connects to what Tony was saying. This is a critical area with respect to which we have a lot to do.

CHIEF JUDGE EDWARDS: I would love to continue this conversation for the rest of the day, to gain further insights on some of the issues that have been raised and to pursue some questions that time has not allowed us to address today. Unfortunately, however, our time is up. I am very grateful to our distinguished panelists for sharing their strong, wise, and, sometimes, controversial views on many difficult issues. I think that you can discern from their comments that, even as to controversial questions that may spark disagreement, our panelists are uniquely wise in their judgments and they care deeply about what is going on in legal education and in the legal profession. And they have, in their own realms, worked very hard to improve the vision of legal education and the ideals of the law – in their teaching, writing, speaking, fund-raising efforts, and decanal administrations.

We have identified some areas of disagreement today. Nonetheless, everyone seems to agree that there are bridges that need to be built between the

academy and the profession, so as to minimize the tensions between the academic and professional missions of the law school. Time will tell whether we are successful in building these bridges.

A P P E N D I X

HONORABLE HARRY T. EDWARDS
Chief Judge
United States Court of Appeals
for the District of Columbia Circuit

Harry T. Edwards was appointed to the United States Court of Appeals for the D.C. Circuit in 1980. He became Chief Judge in September 1994. After graduation from law school, he practiced law in Chicago for five years, then joined the ranks of legal academics. Judge Edwards was a tenured professor of law at the University of Michigan (1970-75 and 1977-80) and at Harvard Law School (1975-77). Since his appointment to the bench, Chief Judge Edwards has taught on a part-time basis at numerous law schools, including NYU where he has been an adjunct professor of law since 1990.

Judge Edwards has served as Chairman of the Board of Directors of AMTRAK; a member of the Board of Directors of the National Institute for Dispute Resolution; an executive committee member of the Order of the Coif; Vice President of the National Academy of Arbitrators; and Chairman of the Legal Services Center in Ann Arbor, Michigan.

Judge Edwards is the co-author of four books. He has also published scores of articles and booklets and presented countless papers and commentaries dealing with labor law, equal employment opportunity, labor arbitration, higher education law, alternative dispute resolution, federalism, judicial process, legal ethics, legal education, judicial administration, and professionalism. His most important publications, *The Growing Disjunction Between Legal Education and the Legal Profession*, MICHIGAN LAW REVIEW, Vol. 91, No. 1 (1992), pp. 401-445, and *The Growing Disjunction Between Legal Education and the Legal Profession*: *A Postscript*, MICHIGAN LAW REVIEW, Vol. 91, No. 8 (1993), pp. 2191-2219, have been the source of extensive comment, discussion, and debate among legal scholars and practitioners in the United States.

Judge Edwards received a BS from Cornell University in 1962 and a JD from the University of Michigan Law School in 1965. He has also received numerous honorary degrees.

JUDITH AREEN
Dean
Georgetown University Law Center

Judith Areen was appointed Dean of Georgetown University Law Center and Executive Vice President for Law Affairs of Georgetown University in 1989. As the head of the largest law school in the United States, Dean Areen is responsible for 95 full-time and 300 part-time faculty and a budget of $65 million. During her tenure, the Law Center has added 20 full-time faculty positions, constructed a student center that houses nearly 300 students, and expanded academic programs in international law, clinical law and legal ethics.

Dean Areen joined the Law Center faculty in 1972. Her areas of academic expertise include family law; constitutional law; and law, medicine and ethics. She is the author of a widely used casebook on family law and the co-author of another on law, science and medicine.

Dean Areen has held positions in both the private and public sector, including Director of the Federal Legal Representation Project of the Office of Management and Budget and Special Counsel to the White House Task Force on Regulatory Reform.

Judith Areen received an AB from Cornell University in 1966 and a JD from Yale Law School in 1969.

ROBERT C. CLARK
Dean
Harvard Law School

Robert Clark is Dean and Royall Professor of Law at Harvard Law School. Dean Clark joined the faculty of Harvard in 1979 after serving as a tenured member of the Yale Law School faculty. He has served as Dean of Harvard Law School since 1989. A corporate law specialist, he has authored a treatise on corporate law, as well as numerous law review articles and book chapters on a range of topics including corporate law, the regulation of financial institutions, health care regulation and the growth of

the legal profession. Dean Clark has taught a variety of courses during his tenure in academia – Corporate Finance, Theory of Corporation, Taxation of Corporations and Shareholders, Regulation of Financial Institutions, and Government and Health Care – to name a few.

As Dean, he presided over the largest successful fundraising campaign in the history of legal education. Dean Clark has also expanded the faculty and fostered intellectual exchanges among faculty members through workshops, seminars and lectures.

Robert Clark received an AB from Maryknoll College in 1966, a PhD from Columbia University in 1971, and a JD from Harvard Law School in 1972.

ANTHONY T. KRONMAN
Dean
Yale Law School

Anthony T. Kronman is Dean and Edward J. Phelps Professor of Law at Yale Law School. He was appointed the sixteenth Dean of Yale Law School in 1994, after serving for 16 years on the law school faculty. Prior to joining the Yale faculty, Dean Kronman taught for two years at the University of Chicago Law School and for one year at the University of Minnesota Law School. His principal teaching areas include contracts, bankruptcy, jurisprudence and the legal profession.

The recipient of numerous academic honors, Dean Kronman is author or co-author of four books and scores of articles on various scholarly subjects. His most recent book, *The Lost Lawyer*, deals with the contemporary state of the American legal profession and the movement away from the "lawyer statesman" ideal of responsible law practice.

Dean Kronman received a BA from Williams College in 1968, a PhD from Yale University in 1972 and a JD from Yale Law School in 1975.

JOHN E. SEXTON
Dean
New York University School of Law

John Sexton, the Warren Burger Professor of Law at New York University School of Law, has served as the school's Dean since 1988 and has been on the faculty at the school since 1981. Dean Sexton is a prolific writer, having co-authored three books, one casebook, and numerous articles on such diverse topics as constitutional law, federal jurisprudence, and court administration. He is a former president of the Association of American Law Schools. Currently, Dean Sexton is the Director of the Fund for Modern Courts. In addition, he sits on the American Arbitration Association's Panel of Neutral Arbitrators for Complex Cases and has served as a special master in numerous complex litigation matters.

Prior to joining the faculty of the law school, Dean Sexton was a law clerk to the Honorable Warren E. Burger, Chief Justice of the United States, and the Honorable David L. Bazelon and the Honorable Harold Leventhal, both of the United States Court of Appeals for the District of Columbia Circuit.

Dean Sexton received a BA, MA and PhD from Fordham University in 1963, 1965 and 1978, respectively, and a JD from Harvard Law School in 1979.